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I N D E X

<u>Witnesses:</u>	<u>Direct</u>	<u>Cross</u>	<u>Re-direct</u>	<u>Re-cross</u>	<u>By Examiner</u>
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Ray Baker	5	10	12		13
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E X H I B I T S

<u>Number</u>	<u>For Identification</u>	<u>In Evidence</u>
Exhibit A	12	18
Exhibit B	12	18

1 JUDGE DUGGAN: Pursuant to the authority vested
2 in me by the Illinois Commerce Commission by the
3 State of Illinois, I call Docket T10-0109 for
4 hearing.

5 May I have the appearances for the
6 record.

7 MR. BERMAN: Jeremy Berman on behalf of the
8 Elgin Joliet Eastern Railway Company.

9 Address is 29 North Wacker Drive,
10 Suite 920, Chicago, Illinois. Phone number is (312)
11 252-1500.

12 JUDGE DUGGAN: Mr. Powers.

13 MR. POWERS: Daniel Powers, staff of the
14 Illinois Commerce Commission, 527 East Capitol
15 Avenue, Springfield, Illinois 62701. Phone (847)
16 516-0733.

17 JUDGE DUGGAN: Okay. So we're here on Elgin,
18 Joliet & Eastern Railway own's petition to
19 reconstruct a railroad owned bridge that carries the
20 railroad's tracks over grade separation at Butler
21 Street in Chicago Heights.

22 We are also asking for a variance from

1 the vertical clearance from the administrative rule
2 requirements.

3 And we received -- or the Commission
4 had received a file, a letter on City of Chicago
5 Heights stationary, office of the mayor stating that
6 it has reviewed CN's proposed project for bridgework
7 at Butler Street in Chicago Heights and has no
8 objections.

9 Mr. Berman, can you clarify who CN is.

10 MR. BERMAN: CN is the parent corporation of
11 the EJ&E. EJ&E is a wholly owned, but independently
12 owned subsidiary of CN.

13 JUDGE DUGGAN: Some of your words I didn't
14 catch. I heard you say the CN is the parent company
15 of somebody.

16 MR. BERMAN: The EJ&E, Elgin Joliet Eastern.

17 JUDGE DUGGAN: For me and my diction
18 understanding down here, if you can -- you speak
19 pretty fast when you say that.

20 Since I'm not familiar with it, I'm
21 not even able to guess what you said, so.

22 Mr. Berman, you want to call your

1 witness.

2 MR. BERMAN: Yes, the railroad would call

3 Mr. Ray Baker.

4 (Witness sworn.)

5 RAY BAKER,

6 called as a witness herein, having been first duly

7 sworn, was examined and testified as follows:

8 DIRECT EXAMINATION

9 BY

10 MR. BERMAN:

11 Q Could you please state your name for the

12 record.

13 A Raymond C. Baker.

14 Q And who is your current employer?

15 A The EJ&E Railway Company.

16 Q And what is your position there?

17 A I'm the senior manager of engineering.

18 Q Can you briefly describe your duties as the

19 senior manager of engineering?

20 A Yes, I work on the EJ&E integration

21 projects that are occurring in and around the City of

22 Chicago.

1 Q And are you familiar with the EJ&E
2 operations in Chicago Heights?

3 A Yes.

4 Q Can you briefly explain those operations.

5 A Currently, the EJ&E Railway Company has a
6 two track, main track that operates in an east/west
7 direction and crosses Butler street as a grade
8 separation.

9 The railroad structures, the bridges
10 carry our traffic over the highway traffic which
11 proceeds underneath Butler Street in basically a
12 north/south direction.

13 Q And are you familiar with a project to
14 reconstruct this bridge at Butler Street?

15 A Yes.

16 Q Mr. Baker, I'm going to show you what was
17 attached to Petitioner's Petition as Exhibit A.

18 Do you recognize this exhibit?

19 A Yes.

20 Q Can you explain what is shown on this
21 exhibit?

22 A This shows the existing conditions and the

1 elevation up in the left-hand upper corner. It shows
2 the section as it exists today where there's a
3 multi-track structure over the grade separation at
4 Butler Street.

5 It shows the new proposed elevation in
6 the final configuration where a new structure at
7 basically the existing clearance would be placed --
8 would be replaced on the existing abutments.

9 Then it shows in the Section BB, how
10 the two new structures would be carried over Butler
11 Street looking over from an east/west direction or
12 basically a perpendicular to the highway.

13 Then on the second page of that
14 exhibit, which just shows the plan view, and you can
15 see where that's looking down at the bridge that it
16 basically stays on the existing foundations and
17 piers, and basically there's no change to the
18 vertical and horizontal dimensions of Butler Street
19 which travels perpendicular to the bridges.

20 Q Does this exhibit show the work that EJ&E
21 plans to do at the bridge?

22 A Yes.

1 Q Are you familiar with the clearances
2 underneath the bridge?

3 A Yes. Currently, the vertical clearance for
4 highway traffic is posted at 12 feet.

5 Q And based on your experience, is it
6 possible for the railroad to improve that clearance?

7 A Based upon this current location, it's not
8 practical for us to improve the vertical clearance at
9 this location.

10 Q Do you know why that is?

11 A The road is basically depressed today.

12 The railroad is on a grade. Butler
13 Street to the north comes off of a road named East
14 End Avenue. That road to the north of the railroad
15 which runs parallel to the railroad primarily serves
16 a single industry.

17 Then the road goes underneath the
18 railroad, and the road basically goes down hill
19 towards the railroad in an easterly direction.

20 And there is just not sufficient grade
21 changes to allow for additional reduction in vertical
22 height of the road.

1 Q There's currently a pedestrian sidewalk
2 underneath the bridge; is that correct?

3 A Yes.

4 Q And can you explain what the EJ&E plans to
5 do with that sidewalk?

6 A Long term, we have a working relationship
7 with the City of Chicago Heights where we are going
8 to work with them for them to relocate that existing
9 pedestrian walkway, which is not used at this time
10 over into a new grade separate location that would
11 cross the EJ&E Railway Company at a different
12 location in the same vicinity.

13 Q And why is this bridge reconstruction
14 project necessary?

15 A This is part of our ongoing maintenance
16 program to replace structures that like any highway
17 or railroad authority that have been identified for
18 renewal, so it's a maintenance project.

19 Q How does the EJ&E plan to pay for this
20 project?

21 A This is a self-financed project. And it
22 will all be paid for with funds from the railroad.

1 MR. BERMAN: Thank you. That's all the
2 questions I have.

3 JUDGE DUGGAN: Okay. I have a few.

4 CROSS EXAMINATION

5 BY

6 JUDGE DUGGAN:

7 Q Mr. Baker, I'm sure everybody in the
8 industry knows that the reference to CN includes
9 Elgin Joliet and Eastern Railway, just seeing the
10 Chicago Heights letter refers to CNN. I would like
11 to have that on the record that CN would include
12 this.

13 Have you seen the Chicago Heights
14 letter? Do you have it available to you?

15 A Yes, sir.

16 Q And who made that communication with the
17 City of Chicago Heights?

18 A This was made by our government affairs
19 personnel.

20 Q Okay.

21 A And not Mr. Berman.

22 MR. BERMAN: No, your Honor, it was not me.

1 BY JUDGE DUGGAN:

2 Q Was that communication done with your
3 knowledge, Mr. Baker?

4 A Yes, sir.

5 Q And your government personnel is the person
6 who received this back or they sent it directly to
7 the Commerce Commission, it looks like?

8 A Yes, sir, and they provided me with a copy.

9 Q Who is they?

10 A Jim Keedaras, who is our government
11 affairs.

12 Q Could you spell that.

13 A K-e-e-d-a-r-a-s

14 Q So he provided it to you.

15 A Yes.

16 JUDGE DUGGAN: We should probably get that
17 marked as an exhibit, so that it's part of the
18 record. We will keep Exhibit A to attach to the
19 exhibits of the hearing.

20 Do you have a copy of that,?

21 MR. BERMAN: Yes, I do, your Honor.

22

1 (Whereupon, EJ&E Deposition
2 Exhibit Nos. A and B was marked
3 for identification.)

4 MR. BERMAN: He has a copy of Exhibit B in
5 front of him.

6 JUDGE DUGGAN: Do you want to go ahead and have
7 him identify that, Mr. Berman.

8 REDIRECT EXAMINATION

9 BY

10 MR. BERMAN: .

11 Q Do you recognize the letter that's been
12 marked as Exhibit B?

13 A Yes, sir.

14 Q Can you explain what that letter is?

15 A This is a letter to the Illinois Commerce
16 Commission indicating that the City of Chicago
17 Heights has reviewed our plans and maintenance
18 requirements for our bridge at Butler Street and has
19 no objection to the work that we are proposing to do
20 there.

21 And the EJ&E is an independent company
22 owned by the CN at this location, and the CN is

1 the -- is our parent company, and they're the ones
2 that provide the engineering and the funding for this
3 carrier project.

4 JUDGE DUGGAN: Okay. Thank you.

5 If you could also show him what's been
6 marked for evidence purposes as Exhibit A also.

7 BY MR. BERMAN:

8 Q Mr. Baker, I'm showing you what's been
9 marked as Exhibit A at this hearing.

10 Is this the same exhibit that you were
11 referring to earlier that was attached to EJ&E's
12 petition?

13 A Yes, sir. This is an exhibit showing
14 existing conditions and proposed conditions.

15 JUDGE DUGGAN: Okay. Thanks.

16 CONTINUED CROSS EXAMINATION

17 BY

18 JUDGE DUGGAN:

19 Q Now, looking at Exhibit A, there is two
20 pages, correct?

21 A Correct.

22 Q And the first page, there's four diagrams,

1 correct?

2 A That's correct, sir.

3 Q Okay. And is the top set what's existing
4 and the bottom set what's proposed?

5 A Yes, sir.

6 Q Okay.

7 A Then on Page 2, that's the proposed final
8 looking down at it or planned view.

9 Q All right. Now, you said you're removing a
10 pedestrian walkway?

11 A Long term, the intent with us in Chicago
12 Heights is to remove the existing pedestrian walkway
13 that you can see denoted in the picture in the upper
14 left-hand corner.

15 Q The two parallels with the crossbars up at
16 the top, that's the railroad?

17 A If you look at the section line AA, there
18 is a dimension, 7-foot. If you can find that
19 dimension of 7-foot, that's the existing PED walkway,
20 elevated, PED walkway.

21 Q Okay.

22 A So when we talk about what the existing

1 conditions underneath there, today there is basically
2 what I would call a bay or a lane for the traffic.
3 Then, of course, there is this existing pedestrian
4 walkway, which at this time isn't in use; however,
5 our work doesn't affect that. We are going to replace
6 the structure above it that carries the railroad.

7 Q When you say it's not in use, you mean it's
8 blocked off?

9 A I know they're not using it. I don't know
10 if it's blocked off by what I would consider
11 barricades or something.

12 Q But when you say you know they're not using
13 it --

14 A There is no evidence that anybody is using
15 that as access on both sides of the walkway, that
16 there is no maintenance occurring by the City of
17 Chicago Heights.

18 Q You say it's not going to be removed in the
19 short-term repair or reconstruction?

20 A That's correct. The short-term, our plan
21 is to renew the bridge structure that carries the
22 railroad over the road and walkway.

1 Q Then what is the long-term?

2 A The long-term is the work with the City of
3 Chicago Heights to relocate the pedestrian walkway on
4 a new alignment underneath the railroad as a grade
5 separated walkway.

6 Q Okay. So when you do remove it, you're
7 going to put in another one?

8 A We are going to work with them to do that,
9 that's correct.

10 Q Okay. You were asked about whether you
11 could meet the Commission requirements for clearance
12 and you stated that, apparently, there was not the
13 room necessary to make the necessary grade changes.

14 Were you discussing both of the
15 roadway and the railroad when you said that?

16 A Yes.

17 JUDGE DUGGAN: Mr. Powers?

18 CROSS EXAMINATION

19 BY

20 MR. POWERS:

21 Q Just to clarify, on Exhibit A, the first
22 page, looking at what is labeled as proposed

1 elevation, and the dimension of 25 feet, I guess,
2 from abutment to abutment, this is a long-term
3 improvement?

4 A Yes, sir.

5 Q Okay. So, basically, existing elevation is
6 what is also going to be the proposed elevation in
7 this improvement?

8 A Yes, sir.

9 Q Okay. Are there any existing warning signs
10 either in advance of the structure or on the
11 structure itself notifying the motoring public that
12 there is a substandard vertical clearance?

13 A On this structure, the clearance is posted.
14 I am not aware and have no knowledge if there is
15 advanced warning signs in either direction. There may
16 be, but I'm not aware of it.

17 Q And do you know -- how big or what color
18 the existing posted sign on the structure is?

19 A I do not have a dimension of the sign. The
20 sign is yellow with back lettering.

21 Q Okay.

22 MR. POWERS: I have no further questions, your

1 Honor.

2 JUDGE DUGGAN: What is the vertical clearance
3 shown in the diagrams of Exhibit A.

4 THE WITNESS: 12 feet, sir.

5 JUDGE DUGGAN: Okay.

6 Mr. Berman?

7 MR. BERMAN: Nothing further, your Honor.

8 JUDGE DUGGAN: Okay. And you want to offer
9 Exhibits A and B into evidence.

10 MR. BERMAN: Yes, I would like to offer
11 Exhibits A and B into evidence.

12 JUDGE DUGGAN: Any objection, Mr. Powers?

13 MR. POWERS: No objections.

14 JUDGE DUGGAN: Exhibits A and B are admitted.
15 If you could put them in an envelope to me or find
16 someone to get them down here.

17 (Whereupon, Exhibit Nos. A and B
18 were admitted into evidence.)

19 JUDGE DUGGAN: Staff still has some
20 specifications you want to present to the railroad;
21 is that correct.

22 MR. POWERS: We can work out agreed order, your

1 Honor.

2 JUDGE DUGGAN: But you have some specifications
3 you would like that you have not discussed with them
4 fully?

5 MR. POWERS: Some possible signing issues, but
6 that's something we can get in the agreed order.

7 JUDGE DUGGAN: Okay. At this point, we will
8 leave it to you to try to workup the agreed order
9 rather than myself drafting one?

10 MR. POWERS: That's fine.

11 MR. BERMAN: That's fine, your Honor.

12 JUDGE DUGGAN: Okay. Any idea of the time
13 frame?

14 MR. BERMAN: I can draft an agreed order and
15 get it to Mr. Powers by the end of the week.

16 JUDGE DUGGAN: Apparently, he's going to have
17 to talk with you about these other issues.

18 MR. BAKER: There is only one other issue, your
19 Honor, unless Dan has some other ideas.

20 JUDGE DUGGAN: When can you do this? What is
21 your time frame, Dan, assuming you get an order in a
22 week from Mr. Berman?

1 THE WITNESS: I will say at least 30 days as a
2 minimum to get something to you.

3 JUDGE DUGGAN: Okay. Let's go ahead and say --
4 I want to have something on my calendar, so it's not
5 floating out there.

6 MR. POWERS: Okay.

7 JUDGE DUGGAN: I can set this at the same time
8 as 11/13, and if we have a proposed order, we can
9 mark the record heard and taken. I will leave the
10 record open.

11 Does anyone have any concerns with
12 that? That's November 3rd, Dan. That's 5 weeks
13 away. The main thing is if you still need time, I
14 noted that on the record, and I can set it out. It
15 doesn't hem you in. It actually gives you another
16 outlet by doing that.

17 MR. POWERS: Sure.

18 JUDGE DUGGAN: Let's set it for 9:45 on
19 November 3rd, 2010.

20 And, again, if we are authorized,
21 Mr. Berman, to talk to Mr. Powers, if I've got a
22 proposed order, no one has to show or Mr. Powers can

1 tell me he's going to report on the status and you
2 don't have to show up. You don't have to bring
3 Mr. Baker or anything, because the only reason we
4 would be coming back is if we weren't able to get a
5 proposed order and we needed to discuss something.

6 MR. BAKER: Your Honor, we are looking to do
7 this work this year. Mr. Berman and I will work to
8 get Mr. Powers a proposed order so that he can markup
9 staff's recommendations, so we can have this back to
10 you way before November 3rd for your review.

11 JUDGE DUGGAN: I think Mr. Powers is thinking
12 of his own work schedule and other obligations is
13 what he's concerned about.

14 MR. BAKER: I understand, sir.

15 JUDGE DUGGAN: With you guys being on the ball,
16 we appreciate that.

17 THE WITNESS: We are in the position to do the
18 work this year if we can obtain the waiver.

19 JUDGE DUGGAN: Because the earliest -- this
20 will not get to the Commission until --

21 MR. BAKER: Whatever date you provide us with
22 the waiver is what we are going to shoot for in the

1 construction. It just helps us in our planning for
2 our activities to having good solid dates for
3 scheduling people in.

4 So whatever you can do for us, your
5 Honor, is appreciated. So if it's November 3rd we
6 have to have the proposed order back and approved,
7 we'll work to that, and then whatever the Commission
8 can do to order the waiver, we are looking forward to
9 that opportunity.

10 JUDGE DUGGAN: Well, what I was going to say is
11 that even right now I think the next Commission date
12 I can get it in is three weeks from now. It's like
13 October 26th, something like that. Then the next one
14 I think is November 4th.

15 So you're going to be working in the
16 winter. Is that something you can do?

17 MR. BAKER: Yes, we would prefer not to, but it
18 involves work adjacent to the railroad, but we'll do
19 whatever we have to do.

20 JUDGE DUGGAN: Right now I couldn't get
21 it -- if I submit it today, it wouldn't get out until
22 the end of October.

1 THE WITNESS: I understand, sir.

2 JUDGE DUGGAN: Again, that does affect if we
3 don't actually get an order in until November 3rd,
4 then you're not going to get, then you have
5 Thanksgiving schedules, Christmas schedules, and for
6 the Commission, I have to look at their dates, but it
7 does present issues.

8 Can we separate out the orders for the
9 waiver from the other issues, Dan, do you know?

10 MR. POWERS: I think we can turn something
11 around pretty quickly.

12 You're correct in stating about my
13 work schedule, we've got other stuff going on, but if
14 we turn it around quickly, and I think that it should
15 be included in the order, the waiver.

16 JUDGE DUGGAN: Okay. Right now, I think if you
17 wanted it at the end of October I have to turn it in
18 next Wednesday whatever it is, October 6th;
19 otherwise, I think the next Commission date is
20 roughly November 4th.

21 So if you get it to me realistically
22 it's probably going to be the November 4th date.

1 So what I have to do -- I will go
2 ahead and mark this thing heard and taken, so that --
3 and we won't have another date, so we don't have any
4 problems with the record being open. All right.

5 With that understanding, then, I will
6 mark the record heard and taken.

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9 HEARD AND TAKEN

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